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Ara Otteson and Nellie A. Otteson, Husband and Wife v. Richard D. Malone and Hila Sue Malone, Husband and Wife : Petition In Opposition To Respondents' Petition For Hearing and Brief In Support of Petition In Opposition To Petition and Brief For Rehearing By Plaintiffs-Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

ARA OTTESON and NELLIE A.)
OTTESON, husband and wife,)
)
Plaintiffs-Respondents,)
)
vs.)
)
RICHARD D. MALONE and HILA)
SUE MALONE, husband and wife,)
)
Defendants-Appellants.)
)

Case No. 15478

PETITION IN OPPOSITION TO RESPONDENTS'
PETITION FOR HEARING AND
BRIEF IN SUPPORT OF PETITION IN OPPOSITION
TO PETITION AND BRIEF FOR REHEARING
BY PLAINTIFFS-RESPONDENTS

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FILED

OCT 20 1978

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

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MALONE, husband and wife,

Defendants-Appellants.

Case No. 15478

PETITION IN OPPOSITION TO RESPONDENTS'
PETITION FOR HEARING

The Supreme Court of the State of Utah ruled correctly in its opinion filed September 13, 1978 in the above-captioned matter when it held that the plaintiffs-respondents had failed to demonstrate by "clear and convincing evidence" that they had not understood nor agreed to the Lease and Option which they signed.

Defendants-Appellants contend that said decision was amply supported by the following:

- (1) The Lease and Option is so plain and unambiguous on its face that any person of reasonable intelligence could ascertain its purpose. The trial judge, in his Findings of

Fact and Conclusions of Law, inferred that Mr. Otteson was such a person of reasonable intelligence when the judge concluded that Mr. Otteson appeared to be in "good health and of sound and disposing memory".


(2) All of the parties to the Lease and Option had considerable opportunity to review the instrument before signing the final draft.

(3) The Ottesons were amply protected in their dealings with the Malones by Mr. Boyd Bunnell, an attorney selected by the Ottesons.

(4) The trial court should have excluded parole evidence regarding the Lease and Option since the instrument was a final embodiment of all of the prior negotiations of the parties.

WHEREFORE, defendants-appellants petition the Utah Supreme Court to confirm and maintain its decision to reverse the decision of the trial court and to remand with instructions to order specific performance to the defendants-appellants.

RESPECTFULLY submitted this 19th day of October, 1978.


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